

SUPREME COURT OF ILLINOIS

COURT CONVENED AT 9:30 A.M., TUESDAY, MAY 18, 2004

THE FOLLOWING ANNOUNCEMENTS WERE MADE:

ADVISEMENT DOCKET

No. 84933 - People State of Illinois, appellee, v. Keith Shum, appellant.

Motion by appellant, pro se, for this Court to direct the Circuit Court of Cook County to determine appellant's actual innocence claim on the merit system. Motion denied.

Order entered by Justice Fitzgerald.

CIVIL DOCKET

Nos. 97531 - In re Austin W., a Minor (Timothy D. Berkley,
97580 etc., appellee, v. The Department of Children and
Cons. Family Services, appellant) Rosemary Fontaine,
intervenor/appellee.

Motion by appellant Rosemary Fontaine for leave to file brief instant. Motion allowed.

Order entered by Justice Rarick.

LEAVE TO APPEAL DOCKET

No. 98350 - People State of Illinois, respondent, v. Miguel Martinez, petitioner.

Motion by petitioner for an extension of time for filing petition for leave to appeal to and including May 26, 2004. Motion allowed.

Order entered by Justice Fitzgerald.

No. 98376 - In re Chanelle R., a Minor (People State of Illinois, respondent, v. Shirley B., petitioner).

Motion by petitioner for an extension of time for filing petition for leave to appeal to and including May 21, 2004. Motion allowed.

Order entered by Justice Thomas.

THE FOLLOWING MOTIONS WERE PRESENTED AND ORDERS WERE ENTERED
AS INDICATED:

ADVISEMENT DOCKET

No. 98172 - Gloria Bates, movant, v. Hon. Tobias Barry,
Justice of the Appellate Court, Third District, et
al., etc., respondents.

Motion by movant for waiver of fees. Motion
allowed.

Order entered by Justice Rarick.

No. 98207 - Jimmie Birmingham, appellant, v. Janet Proctor,
appellee.

Motion by appellant, pro se, to restrain and
enjoin Hon. Daniel W. Hynes, Comptroller of the
State of Illinois, from disbursing state funds to
the law firm of O'Neill & Proctor. Motion
denied.

Order entered by Justice Rarick.

No. 98233 - Alan Libbra, petitioner, v. The Madison County
Regional Board of School Trustees et al., etc.,
respondents.

Motion by respondents Rita F. Zeller et al. for
an emergency hearing and response to Livingston
School District's answer to petition for leave to
appeal. Motion denied.

Order entered by Justice Rarick.

PEOPLE'S DOCKET

No. 96898 - People State of Illinois, appellant, v. Cardenal
Brown, appellee.

Motion by appellee to abate conviction ab initio
due to death of appellee.

Nos. 97231 - People State of Illinois et al., appellees, v.
97272 Robert E. Norris et al., appellants.
97816

Cons. Motion by appellee People State of Illinois for
an extension of time for filing brief to and
including June 16, 2004.

No. 97239 - People State of Illinois, appellee, v. Ivory Lee, appellant.

Motion by appellee for an extension of time for filing brief to and including June 16, 2004.
Motion allowed.

Order entered by Justice Fitzgerald.

No. 97292 - In the Matter of D.W., a Minor (People State of Illinois et al., appellees, v. L.M., appellant).

Unopposed motion by appellee for an extension of time for filing brief to and including June 16, 2004. Motion allowed.

Order entered by Justice Fitzgerald.

No. 97452 - In re Detention of Harold Powell (People State of Illinois, appellant, v. Harold Powell, appellee).

Unopposed motion by appellee for an extension of time for filing brief to and including June 22, 2004. Motion allowed.

Order entered by Justice Fitzgerald.

No. 97486 - People State of Illinois, appellant, v. Frederick E. Hood, appellee.

Motion by appellant for an extension of time for filing brief to and including June 16, 2004.

CIVIL DOCKET

Nos. 96250 - PHL, Inc., et al., appellees, v. Pullman Bank and
96294 Trust Company, etc., et al., appellants.
Cons.

Motion by appellants for leave to file supplemental authority instant. Motion allowed.

Order entered by Justice Rarick.

No. 96805 - Jewelers Mutual Insurance Company, etc., et al., appellees, v. Firstar Bank Illinois, appellant.

Unopposed motion by appellee for an extension of time for filing brief to and including June 22, 2004. Motion allowed.

Order entered by Justice Fitzgerald.

No. 96978 - Central Illinois Light Company, etc., appellee, v. The Home Insurance Company etc., et al., appellants.

Motion by appellant The Home Insurance Company to take judicial notice that The Home Insurance Company is in Liquidation. Motion allowed.

Order entered by Justice Rarick.

No. 97430 - Earl M. Schneider, appellant, v. Jodi Ann Schneider, appellee.

Motion by appellee for an extension of time for filing brief to and including June 30, 2004. Motion allowed.

Order entered by Justice Thomas.

Nos. 97481 - Lula Hobbs et al., appellees, v. Hartford
98309 Insurance Company of the Midwest, etc., et al.,
Cons. appellants.

Motion by the Farmers Automobile Insurance Association, Pekin Insurance Company, and the Property Casualty Insurers Association of America for leave to file a brief as amici curiae instant in support of appellants. Motion allowed.

Order entered by Justice Rarick.

No. 98354 - Union Carbide Corporation, appellant, v. Hon. Nicholas G. Byron, Judge of the Third Judicial Circuit, etc., et al., appellees.

Motion by appellant for direct appeal to this Court pursuant to Supreme Court Rule 302(b) or for a supervisory order.

Motion by appellant for stay of proceedings in the Circuit Court of Madison County in Union Carbide Corporation, v. Gunnlaugsson, case No. 03-L-1294, pending disposition of appellant's motion for direct appeal to this Court pursuant to Supreme Court Rule 302(b) or for a supervisory order. Motion denied.

Order entered by Justice Rarick.

No. 98411 - Mark Allen, petitioner, v. Hon. John Joseph Hynes, Judge of the Circuit Court of Cook County, et al., respondents.

Motion by petitioner for leave to file a petition for an original writ of mandamus or for a supervisory order.

Motion by petitioner to withdraw petitioner's motion for leave to file a petition for an original writ of mandamus or for a supervisory order. Motion allowed.

Order entered by Justice Fitzgerald.

LEAVE TO APPEAL DOCKET

No. 97898 - Jennifer Peters-Farrell, respondent, v. Thomas Peters-Farrell, petitioner.

Motion by S. Lawrence Kocot, Don L. Bell, II, and Mary Ellen Fleck for leave to appear pro hac vice and file a brief instante as amicus curiae on behalf of the National Association of Chain Drug Stores, Inc., in support of petitioner. The request to appear pro hac vice is allowed. The motion to file amicus brief is denied without prejudice to refile a motion if the petition for leave to appeal is allowed.

Order entered by Justice Fitzgerald.

No. 98195 - Marvin Binns, petitioner, v. The Housing Authority of the County of Cook, respondent.

Motion by petitioner, pro se, for leave to file petition for leave to appeal instante in excess of the page limitation, but not exceeding 22 pages. Motion allowed.

Order entered by Justice Fitzgerald.

Motion by petitioner, pro se, for leave to supplement petition for leave to appeal instante. Motion allowed.

Order entered by Justice Fitzgerald.

No. 98379 - U.S. Bank National Association et al., etc.,
petitioners, v. Michael Clark et al., etc.,
respondents.

Motion by Illinois Mortgage Bankers Association
and Illinois Association of Mortgage Brokers for
leave to appear and file a brief as amici curiae
instanter in support of petitioners. Motion
denied without prejudice to refile a motion if
the petition for leave to appeal is allowed.

Order entered by Justice Fitzgerald.

Motion by American Financial Services
Association, National Home Equity Mortgage
Association, and Illinois Financial Services
Association for leave to file a brief as amici
curiae instanter in support of petitioners.
Motion denied without prejudice to refile a
motion if the petition for leave to appeal is
allowed.

Order entered by Justice Fitzgerald.

Motion by Maurice L. Shevin for leave to appear
pro hac vice pursuant to Supreme Court Rule 707
on behalf of National Home Equity Mortgage
Association. Motion allowed.

Order entered by Justice Fitzgerald.

Motion by Robert E. McKew, General Counsel and
Vice President for American Financial Services
Association, for leave to appear pro hac vice
pursuant to Supreme Court Rule 707. Motion
allowed.

Order entered by Justice Fitzgerald.

No. 98380 - Edmond Mekertichian, respondent, v. Mercedes-Benz
U.S.A., L.L.C., petitioner.

Motion by petitioner for leave to file petition
for leave to appeal instanter. Motion allowed.

Order entered by Justice Fitzgerald.

No. 98383 - People State of Illinois, respondent, v. Joseph
Herman, petitioner.

Motion by petitioner for leave to file petition
for leave to appeal instanter. Motion allowed.

Order entered by Justice Fitzgerald.

No. 98389 - Chicago Park District, etc., petitioner, v. Illinois Labor Relations Board, etc., et al., respondents.

Motion by petitioner for leave to file petition for leave to appeal instant. Motion allowed.

Order entered by Justice Fitzgerald.

No. 98390 - People State of Illinois, petitioner, v. Alvin Carter, respondent.

Motion by petitioner for leave to file petition for leave to appeal instant. Motion allowed.

Order entered by Justice Fitzgerald.

No. 98409 - People State of Illinois, respondent, v. Mark Powell, petitioner.

Motion by petitioner for leave to file petition for leave to appeal instant. Motion allowed.

Order entered by Justice Fitzgerald.

No. 98413 - The Mountbatten Surety Company, Inc., respondent, v. Szabo Contracting, Inc., et al., petitioners.

Motion by petitioners for an extension of time for filing petition for leave to appeal to and including June 18, 2004. Motion allowed.

Order entered by Justice Thomas.

MISCELLANEOUS RECORD

M.R.19349 - In re: Michael Edward Marsh. Disciplinary Commission.

Emergency motion by Michael Edward Marsh for reconsideration of the Court's imposition of interim suspension pursuant to Supreme Court Rule 774.

SUPREME COURT OF ILLINOIS

TUESDAY, MAY 18, 2004

THE COURT MADE THE FOLLOWING ANNOUNCEMENTS:

MISCELLANEOUS RECORD

M.R.19393 - In re: Sheila Elaine McFarland. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed. Respondent Sheila Elaine McFarland is suspended from the practice of law for two and one-half (2.5) years and until further order of the Court and until she makes restitution to James Trice in the amount of \$150,000 plus accrued interest, to Christy Copeland in the amount of \$521, and to Demetrica Turner, Brendan Woods, Dr. Wright, Dr. Ogurkiewicz and Specialized Radiology Consultants in accordance with the Physician's Lien Act.

Order entered by the Court.

M.R.19394 - In re: Daniel L. Koehl. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed, and respondent Daniel L. Koehl is suspended from the practice of law for two (2) years and until further order of the Court.

Order entered by the Court.

M.R.19402 - In re: John Damore Jeske. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed. Respondent John Damore Jeske is suspended from the practice of law for one (1) year and until further order of the Court, with the suspension stayed in its entirety by a two (2)-year period of probation subject to the following conditions:

a. Respondent shall abstain from the usage of alcohol and any unprescribed controlled substances;

b. Respondent shall continue in his course of treatment with Elizabeth Bernardino, M.D., David P. Mackinnon, Ph.D., and Richard Ready, M.D., or such other qualified psychiatrists and therapist acceptable to the Administrator, and shall report to Drs. Bernardino, Mackinnon and Ready or such other qualified psychiatrists and therapists on a regular basis of not less than once every two months, with the Administrator advised of any change in attendance deemed warranted by such professional;

c. Respondent shall comply with all treatment recommendations of Drs. Bernardino, Mackinnon and Ready or such other qualified psychiatrists and therapists, including the taking of medications as prescribed;

d. Respondent shall provide to Drs. Bernardino, Mackinnon and Ready, or such other qualified psychiatrists and therapists, an appropriate release authorizing the treating professional to: (1) disclose to the Administrator on at least a quarterly basis information pertaining to the nature of respondent's compliance with any treatment plan established with respect to respondent's condition; (2) promptly report to the Administrator respondent's failure to comply with any part of an established treatment plan; and (3) respond to any inquiries by the Administrator regarding respondent's mental or emotional state or compliance with any established treatment plans;

e. Respondent shall notify the Administrator within fourteen days of any change in treatment professionals;

f. Respondent shall, upon request by the Administrator, submit to random substance testing by a mental health professional or facility approved by the Administrator, within eight hours of receiving notice by the Administrator that he shall submit to the testing. The results of the tests shall be reported to the Administrator. Respondent shall pay any and all costs of such testing;

g. Respondent shall participate in a 12-step program by attending at least three meetings a week. Respondent is to maintain a log of his attendance at the meetings and submit it to the Administrator with his quarterly reports;

h. Respondent shall maintain a sponsor in the 12-step program and shall provide the name, address and telephone number of the sponsor to the Administrator within fourteen days of being placed on probation. Respondent shall request that the sponsor communicate with the Administrator in writing on a quarterly basis regarding respondent's participation and progress in the 12-step program and report any lapses in sobriety or usage of unprescribed controlled substances to the Administrator within 72 hours of his knowledge of that usage;

i. Respondent shall report to the Administrator any lapse in his sobriety or usage of any unprescribed controlled substances within 72 hours of that usage;

j. At least thirty (30) days prior to the termination of the period of probation, respondent shall pay \$9,000 to Vasilios Velelakos and shall provide proof of the restitution to the Administrator;

k. Respondent shall attend meetings scheduled by the Commission probation officer as requested by the Administrator. Respondent shall submit quarterly written reports to the Administrator concerning the status of his practice of law and the nature and extent of his compliance with the conditions of probation;

l. Respondent shall notify the Administrator within fourteen days of any change of address;

m. Respondent shall comply with the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;

n. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation;

o. At least thirty (30) days prior to the termination of the period of probation, respondent shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct;

p. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The full one (1)-year period of suspension shall commence from the date of the determination that any term of probation has been violated and will continue until further order of the Court.

Order entered by the Court.

M.R.19410 - In re: Michael Stewart Grant. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed. Respondent Michael Stewart Grant is suspended from the practice of law for six (6) months, with the suspension stayed after sixty (60) days by a one (1)-year period of probation, subject to the following conditions:

1. Trust Account Procedures

Basic accounting records that must be maintained daily and accurately;

Account Check Register - List sequentially all trust account deposits and trust account checks and maintain a current and accurate daily balance on the trust account.

Account Receipts Journal - List chronologically all deposits into the trust account. Each deposit will list the date of the deposit, the source of the deposit, the client matter, the deposit number, and the amount of the deposit. Maintain a copy of each item deposited.

Account Disbursement Journal - List chronologically all trust account disbursements. Identify each disbursement with the date of the disbursement check, the trust account check number, the payee, the purpose of the disbursement, the client matter, and the amount of the disbursement check.

Client Ledger Journal - List chronologically for each client matter all receipts, disbursements, and remaining balances. Prepare a separate page for each client matter and list chronologically all receipts and disbursements and remaining balances for each client matter.

Source documents which must be preserved for seven years:

Bank Statements

Deposit slips

Cancelled checks - All trust account checks must have a named payee (no checks written to "cash") and the memo portion of the check must contain a reference to a client matter.

Time and billing records

Copies of records from client files that are necessary for a full understanding of the lawyer's financial transactions with the client: e.g., retainer and engagement agreements, settlement statements to clients showing the disbursement of the settlement proceeds; bills sent to clients and records of payments to other lawyers or non-employees for services rendered.

Reconciliations

There must be a running balance maintained for all ledgers and account books. The balances in the client ledger journal must be reconciled each month with the balances in the trust receipts and disbursement journals, the account checkbook register, and the bank statements. Records of these reconciliations must be maintained for seven years.

2. During the period or probation, respondent shall meet with counsel for the Administrator on at least a quarterly basis and shall provide the Administrator with any and all documentation and records requested in order to verify his compliance with Condition One (1);

3. Respondent shall notify the Administrator within fourteen days of any change of address;

4. Respondent shall comply with the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;

5. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation;

6. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remainder of the six (6)-month period of suspension shall commence from the date of the determination that any term of probation has been violated.

Suspension effective June 8, 2004.

Respondent Michael Stewart Grant shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension/probation.

Order entered by the Court.

M.R.19411 - In re: John F. Heckinger, Jr. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed, without acceptance of the Administrator's statement that respondent's personal financial assets constitutes a significant mitigating factor. Respondent John F. Heckinger, Jr. is suspended from the practice of law for sixty (60) days. Suspension effective June 8, 2004.

Respondent John F. Heckinger, Jr. shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

M.R.19416 - In re: Gary Michael Adelman. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed, and respondent Gary Michael Adelman is suspended from the practice of law for ninety (90) days. Suspension effective June 8, 2004.

Respondent Gary Michael Adelman shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

M.R.19427 - In re: Joseph John Bembenek, Jr. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed. Respondent Joseph John Bembenek, Jr. is censured and required to complete the professionalism seminar conducted by the Illinois Professional Responsibility Institute within one (1) year of entry of this order.

Order entered by the Court.

M.R.19428 - In re: Charles Robert Knight. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose reciprocal discipline pursuant to Supreme Court Rule 763 is allowed, and respondent Charles Robert Knight, who has been disciplined in the State of Connecticut, is reprimanded in the State of Illinois.

Order entered by the Court.

M.R.19437 - In re: Jon Michelle Gibbs Richardson.
Disciplinary Commission.

The motion by Jon Michelle Gibbs Richardson for
leave to withdraw her motion to strike her name
from the roll of attorneys pursuant to Supreme
Court Rule 762(a) is allowed.

Order entered by the Court.

SUPREME COURT OF ILLINOIS

CALL OF THE DOCKET, TUESDAY, MAY 18, 2004

Nos. 96250 - PHL, Inc., et al., appellees, v. Pullman Bank and
96294 Trust Company, etc., et al., appellants. Appeal,
cons. Appellate Court, Fifth District.

Oral argument by Gary Feinerman and Andrew B.
David for appellants and by Joseph E. Tighe for
appellees. Submitted. Agenda 12.

No. 96755 - James H. Canel, etc., appellee, v. Judy Baar
Topinka, etc., et al., appellants. Appeal,
Appellate Court, First District.

Oral argument by Brett Legner for appellants and
by John Wylie for appellee. Submitted. Agenda
13.

No. 96963 - Richard Girot, appellant, v. Kenneth Keith, etc.,
et al., appellees. Appeal, Appellate Court, Third
District.

Oral argument by Gary Scott Pyles for appellant
and by Vincent Cainkar and Burton S. Odelson for
appellees. Submitted. Agenda 14.

No. 96978 - Central Illinois Light Company, etc., appellee, v.
The Home Insurance Company etc., et al.,
appellants. Appeal, Appellate Court, Third
District.

Oral argument by Hugh C. Griffin for appellants
and by Thomas McMahon for appellee. Submitted.
Agenda 15.